IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6025 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAMANBHAI R VASOYA

Versus

G S R T C

Appearance:

MR AM MEHTA for Petitioner

MR HARDIK C RAWAL for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 27/06/2000

ORAL JUDGEMENT

#. I have heard the learned counsel on behalf of the petitioner and the learned counsel on behalf of the respondent.

#. The petitioner is a bus conductor under the Gujarat State Road Transport Corporation(hereinafter referred to as the Corporation). The petitioner, while performing his duties on 8.2.1981 as a bus conductor on Jamnagar-Dahisara route a surprise inspection was conducted on the aforesaid route on that day and it was found that the petitioner had realised money from passengers but did not issue proper tickets and thereby he has misappropriated certain amount. After this surprise check was conducted, a report was submitted and on the basis of the report, a charge sheet has been framed and disciplinary proceedings has been started against the petitioner. The petitioner did not participate in the inquiry even though he was given sufficient time by the Inquiring Officer. The Inquiring Officer, after conducting the inquiry found that the charges levelled against the petitioner has been proved and that the Disciplinary Authority after considering the report satisfied that the petitioner is not a person to be retained in service and accordingly by an order dated 30.10.1981 dismissed the petitioner from service. The matter was taken to the Labour Court by the petitioner by way of reference which has been registered as Reference (LCR) No.678 of 1984. The Labour Court after taking evidence both oral and documentary and after hearing the parties dismissed the reference by its order dated11.9.1987. Having felt aggrieved by the judgment and award of the Labour Court, Rajkot the petitioner has filed the present petition for setting aside the judgment and award of the Labour Court, Rajkot for a directing the respondent Corporation to reinstate him in service with all consequential benefits.

#. The learned counsel on behalf of the petitioner submitted that during the inquiry the petitioner was not given any opportunity to defend his case and therefore, the inquiry has been conducted ex-parte and thereby the petitioner did not get any scope to defend his case. It is submitted by the learned counsel on behalf of the petitioner that since no opportunity has been given to the petitioner for defending his case, the inquiry conducted by the Inquiring Officer should be quashed. The learned counsel on behalf of the petitioner also submitted that on the same charge earlier the corporation framed charge against the petitioner but that was dropped by the petitioner and therefore the corporation has no authority to frame charge on the same ground. The learned counsel on behalf of the petitioner also submitted that the Labour Court has committed an error in dismissing the reference. The learned counsel on behalf of the petitioner submitted that in earlier cases this

court has held that dismissal on the ground of misappropriation of money by not issuing the tickets has been held to be disproportionate punishment. The learned counsel therefore, submitted that in the present case also the misappropriation is Rs. 1.75 p. , the Labour Court should have held the penalty of dismissal as disproportionate to the charges of misconduct leveled against the petitioner and therefore, the Labour Court should have quashed the order of dismissal of the petitioner from service. The learned counsel on behalf of the respondent submitted that the petitioner was earlier penalised on various occasions for misappropriation by way of non issuance of tickets to the passengers . The learned counsel for the respondent drew my attention to Annexure.C from where it appears that on 10.6.1980 one increment of the petitioner was withheld for a period of 3 months for committing similar offence of misappropriation of public money for non issuance of tickets. The petitioner was again imposed a penalty by an order dated 3.1.1980 by withholding one increment for a period of 3 months. thereafter the corporation by an order dated 3.6.1980 withheld increment of the petitioner for a period of 3 months for committing the misconduct of misappropriation of public money by not issuing tickets to the passengers. Again, the Corporation by an order dated 31.5.1981 withheld one annual increment of the petitioner for one year. Similar punishment was again imposed by the Corporation by an order dated 30.3.1981. Inspite of all this earlier penalties imposed on the petitioner he did not make any attempt to improve his conduct. It is submitted by the learned counsel on behalf of the respondent that within a short period of about one year the petitioner was penalised for misconduct for five times but even then he has not improved his equality of work. It is submitted by the learned counsel on behalf of the respondent that if such person is retained in service, then it will be dangerous to the Corporation as he will indulge in misappropriation of public money all the time. It is also submitted by the learned counsel on behalf of the respondent that reinstatement of the petitioner would enable him to involve in the same malpractices in future. It is true that every day he has to collect fare from the passengers and issue tickets to them. Reinstatement of such person in service will be dangerous to the Corporation and misappropriation of public money in such a manner would only increase financial burden on general public. In the instant case, it appears that the Labour Court has discussed the evidence adduced by the parties and after going through the evidence, the Labour Court came to a definite finding that there is no illegality of error in

the proceedings. The petitioner is responsible for not defending his case bnefore the Inquiring Officer. It is true that on one occasion, time was not granted by the Inquiring Officer bu[t the Inquiring Officer has given reasons for not granting time . The Labour Court has discussed all these points and came to the conclusion that no illegality has been committed in the disciplinary proceedings. It further appears from the judgment and award of the Labour Court that the charge against the petitioner has been dropped earlier by the corporation because of some technical defects. Therefore, I am of the view that the Labour Court has taken a correct view that if for any technical defect the charge is dropped, then there is no illegality or irregularity to revive the same.

#. I have given due consideration to the arguments made by the learned counsel for both the parties . While examining the penalty , the past conduct is also required to be seen. In the present case, it appears that before the dismissal of the petitioner from service, the petitioner was imposed penalty of withholding of increments three times for a period of 3 months and penalty of withholding of one increment with cumulative effect on two occasions. It further appears that all this misconduct has been committed by the petitioner within a period of about one year. All these earlier five penalties were imposed for misappropriation of public money on the petitioner in the shape of non issuance of tickets to the passengers and having regard to the facts and circumstances of the present case the Labour Court has also held that the petitioner has not only misappropriated public money but he has also misbehaved with the officers who conducted the surprise checking on 8.2.1981 on Jamnagar-Dahisera route. It further appears that the Labour Court has considered all the facts and circumstances and came to the conclusion that it is not a fit case to exercise the discretion under section 11-A of the Industrial Disputes Act. Considering the past conduct of the petitioner and the present conduct for which he has been dismissed from service, I am of the view that the petitioner does not deserve any lenient penalty. I am therefore, of the views that the Labour Court, Rajkot has rightly refused to exercise the discretion for any lenient punishment. The Labour Court, Rajkot has given sufficient reasons for coming to this decision and I do not find any ground to interfere with the judgment and award passed by the Labour Court, Rajkot. Accordingly I do not find any merit in the present petition and accordingly the same is dismissed. Rule discharged. No order as to costs.

(P.K.Sarkar.J)

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